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CHARI ISRANI

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHARI ISRANI, Individually and On) Case No. 8:17-cv-895
Behalf of All Others Similarly Situated,)

Plaintiff,)

vs.)

SECURE ONE CAPITAL)
CORPORATION,)

Defendant.)

**CLASS ACTION COMPLAINT
FOR DAMAGES AND DEMAND
FOR JURY TRIAL**

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of SECURE ONE CAPITAL

1 CORPORATION (“Defendant”), in negligently, knowingly, and/or willfully
2 contacting Plaintiff and on Plaintiff’s cellular telephone in violation of the
3 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby
4 invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper as Plaintiff seeks redress under a federal statute,
7 thus this Court has jurisdiction as this matter involves questions of federal law.

8 3. Venue is proper in the United States District Court for the Central
9 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
10 because Defendant does business within the state of California and the Central of
11 California as Defendant’s headquarters is located in Costa Mesa, California.

12 **PARTIES**

13 4. Plaintiff, CHARI ISRANI (“Plaintiff”), is a natural person residing in
14 Los Angeles County, California and is a “person” as defined by 47 U.S.C. § 153
15 (10).

16 5. Defendant, SECURE ONE CAPITAL
17 CORPORATION (“Defendant”), is a corporation engaged in the business of
18 consumer home financing and servicing with its state of incorporation in California
19 and its corporate headquarters in Costa Mesa, California and is a “person” as
20 defined by 47 U.S.C. § 153 (10).

21 **FACTUAL ALLEGATIONS**

22 6. Beginning in or around January/February of 2016, Defendant began
23 placing autodialed telephone calls to Plaintiff’s cellular telephone number ending
24 in 1950.

25 7. In sum, Defendant has placed several such autodialed solicitation calls
26 to Plaintiff’s cellular telephone throughout the course of 2016.

27 8. Defendant and/or its agent(s) placed its calls from telephone number
28 (951) 304-1333 as well as potentially other numbers.

1 9. The purpose of Defendant's call was to attempt to solicit Plaintiff into
2 applying for various types of home financing loans/plans with the promise of
3 saving Plaintiff money in doing so. Plaintiff had answered a few of these calls and
4 spoke with various employees of Defendant and/or its agent(s) throughout 2016.

5 10. However, when Plaintiff answered the calls, Plaintiff was greeted with
6 "dead air" whereby no person was on the other line. After several seconds, an agent
7 was connected to the automated call, greeted Plaintiff and sought to speak with
8 Plaintiff in an attempt to solicit Plaintiff's business.

9 11. Defendant and/or its agent(s) used an "automatic telephone dialing
10 system", as defined by 47 U.S.C. § 227(a)(1) to place these call to Plaintiff
11 soliciting Plaintiff's business. The dead air that the Plaintiff experienced on the
12 calls is indicative of the use of an automatic telephone dialing system.

13 12. This "dead air" is commonplace with autodialing and/or predictive
14 dialing equipment. It indicates and evidences that the algorithm(s) being used by
15 Defendant's and/or its agent's autodialing equipment to predict when the live
16 human agents are available for the next call has not been perfected and/or has not
17 been recently refreshed or updated. Thus resulting in the autodialer placing a call
18 several seconds prior to the human agent's ability to end the current call he or she
19 is on and be ready to accept the new connected call that the autodialer placed,
20 without human intervention, to Plaintiff.

21 13. The dead air is essentially the autodialer holding the call it placed to
22 Plaintiff until the next available human agent is ready to accept it. Should the call
23 at issue been manually dialed by a live human being, there would be no such dead
24 air as the person dialing Plaintiff's cellular telephone would have been on the other
25 end of the call the entire time and Plaintiff would have been immediately greeted
26 by said person.

27 14. Defendant's call constituted a call that was not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 15. Defendant's call was placed to a telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to *47 U.S.C. § 227(b)(1)*.

4 16. Plaintiff has no business relationship with Defendant whatsoever and
5 never provided Defendant with Plaintiff's cellular telephone number for any
6 purpose. Furthermore, Plaintiff had both verbally and in writing demanded that
7 Defendant cease placing its autodialed solicitation calls to Plaintiff's cellular
8 telephone in February of 2016, again in March of 2016 and again in December of
9 2016. Accordingly, Defendant did not have Plaintiff's "prior express consent" to
10 receive calls using an automatic telephone dialing system on Plaintiff's cellular
11 telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

12 17. As a result of Defendant's alleged violations of law by placing these
13 automated calls to Plaintiff's cellular telephone without prior express consent,
14 Defendant caused Plaintiff harm and/or injury such that Article III standing is
15 satisfied in at least the following, if not more, ways:

- 16 a. Invading Plaintiff's and the putative class' privacy;
- 17 b. Electronically intruding upon Plaintiff's and the putative class'
18 seclusion;
- 19 c. Intrusion into Plaintiff's and the putative class' use and enjoyment
20 of their cellular telephones;
- 21 d. Impermissibly occupying minutes, data, availability to answer
22 another call, and various other intangible rights that Plaintiff and the
23 putative class have as to complete ownership and use of their cellular
24 telephones;
- 25 e. Causing Plaintiff and the putative class to expend needless time in
26 receiving, answering, and attempting to dispose of Defendant's
27 unwanted calls.

CLASS ALLEGATIONS

18. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone call from Defendant or Defendant’s agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system within the four years prior to the filing of this Complaint wherein said person had not previously consented to receive any such call/s

19. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any telephone call from Defendant or Defendant’s agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system within the four years prior to the filing of this Complaint wherein said person had not previously consented to receive any such call/s.

20. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the hundreds, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

21. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes hundreds if not thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

22. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff

1 and Class members via their cellular telephones thereby causing Plaintiff and Class
2 members to incur certain charges or reduced telephone time for which Plaintiff and
3 Class members had previously paid by having to retrieve or administer messages
4 left by Defendant during those illegal calls, and invading the privacy of said
5 Plaintiff and Class members.

6 23. Common questions of fact and law exist as to all members of The
7 Class which predominate over any questions affecting only individual members of
8 The Class. These common legal and factual questions, which do not vary between
9 Class members, and which may be determined without reference to the individual
10 circumstances of any Class members, include, but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant made any telephone call (other than a
13 call made for emergency purposes or made with the prior
14 express consent of the called party) to a Class member using
15 any automatic telephone dialing system to any telephone
16 number assigned to a cellular telephone service;
- 17 b. Whether Plaintiff and the Class members were damaged
18 thereby, and the extent of damages for such violation; and
- 19 c. Whether Defendant should be enjoined from engaging in such
20 conduct in the future.

21 24. As a person that received a call from Defendant using an automatic
22 telephone dialing system, without prior express consent, Plaintiff is asserting
23 claims that are typical of The Class.

24 25. Plaintiff will fairly and adequately protect the interests of the members
25 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
26 class actions.

27 26. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford
 2 individual litigation, the court system could not. It would be unduly burdensome
 3 to the courts in which individual litigation of numerous issues would proceed.
 4 Individualized litigation would also present the potential for varying, inconsistent,
 5 or contradictory judgments and would magnify the delay and expense to all parties
 6 and to the court system resulting from multiple trials of the same complex factual
 7 issues. By contrast, the conduct of this action as a class action presents fewer
 8 management difficulties, conserves the resources of the parties and of the court
 9 system, and protects the rights of each Class member.

10 27. The prosecution of separate actions by individual Class members
 11 would create a risk of adjudications with respect to them that would, as a practical
 12 matter, be dispositive of the interests of the other Class members not parties to such
 13 adjudications or that would substantially impair or impede the ability of such non-
 14 party Class members to protect their interests.

15 28. Defendant has acted or refused to act in respects generally applicable
 16 to The Class, thereby making appropriate final and injunctive relief with regard to
 17 the members of the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 29. Plaintiff repeats and incorporates by reference into this cause of
 22 action the allegations set forth above at Paragraphs 1-28.

23 30. The foregoing acts and omissions of Defendant constitute numerous
 24 and multiple negligent violations of the TCPA, including but not limited to each
 25 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26 31. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
 27 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
 28 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

33. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-32.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

35. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Injunctive relief.

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Injunctive relief.
- Any and all other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands a trial by jury in this action.

Date: May 19, 2017

MARTIN & BONTRAGER, APC

By: /s/ Nicholas J. Bontrager
Nicholas J. Bontrager
Attorneys for Plaintiff